



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Brown and Root Services Corporation

File: B-227079.3

Date: March 31, 1988

DIGEST

General Accounting Office's review does not show that the agency determination that the awardee's technical proposal was significantly stronger than the protester's technical proposal, lacked a reasonable basis, or was unrelated to the evaluation criteria. The contracting officer's award selection was reasonably based upon a price/technical tradeoff analysis where he determined the awardee's significant advantage in the technical criteria, which constituted 75 percent of the evaluation weight, outweighed the protester's price advantage.

DECISION

Brown and Root Services Corporation protests the award of a job order contract to Teer/Jorgenson Associates by the United States Army Corps of Engineers, Savannah, Georgia, pursuant to request for proposals (RFP) No. DACA21-87-R-0135 for an indefinite quantity of maintenance, repair, and minor construction work at Fort Bragg, North Carolina. The contract work would be assigned the contractor by prepriced job orders.

We dismiss the protest in part and deny it in part.

We previously dismissed the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1987), because we believed that Brown and Root failed to file comments or a statement requesting that the case be decided on the existing record within 7 working days of receipt of the agency report on the protest. Brown and Root requested reconsideration of the dismissal asserting that it filed its comments within the requisite timeframe. Upon further review, we discovered that our Office had timely received Brown and Root's comments on the agency report. Consequently, we will consider Brown and Root's protest on the merits.

The RFP contained several volumes of technical specifications for the potential work to be done under the job order contract as well as designated fixed prices for each of the approximately 25,000 tasks that may be performed thereunder. The minimum amount of basic contract and option work was \$1 million per year with a maximum \$15 million for the basic contract and a maximum of \$12 million, \$13 million, and \$14 million, respectively, for the 3 option years.

Offerors were requested to submit a management proposal addressing the technical/management evaluation areas and a pricing proposal. In the pricing proposal, offerors were not to provide detailed pricing information but instead were required to propose two fixed percentage factors: One rate to be applied to that work to be accomplished during normal working hours and a second rate to be applied to work accomplished on other than a normal working hour basis. Under the contract, to determine the fixed amount to be paid the contractor for each contract job order, the appropriate factor, depending upon whether regular or overtime work was involved, would be multiplied by the designated prices for the tasks involved in performing the particular job order. The RFP announced that for purposes of evaluating price the government would assume that 95 percent of the work would be accomplished during normal duty hours and 5 percent on overtime tasks.

The evaluation criteria were listed in the RFP in descending order of importance as follows:^{1/}

- (a) Offeror's management ability (30 points)
- (b) Offeror's subcontracting support capability (25 points)
- (c) Offeror's price consciousness (25 points) as evidenced by:
the relationship of the offeror's price compared to the government estimate to accomplish the task.
- (d) Offeror's experience (15 points)
- (e) Offeror's technical staff (5 points)

Each of the foregoing criteria, except price consciousness, had additional listed subcriteria.

^{1/} Precise values of the criteria were not disclosed in the RFP.

Six proposals were received and point scored and all were included in the competitive range. Discussions were conducted with each offeror and best and final offers (BAFO) were submitted by July 13, 1987. In its BAFO, Brown and Root proposed multipliers that resulted in the lowest price.^{2/} Proposals were reevaluated and Teer/Jorgenson's high score was 84.25 out of 100 possible points and Brown and Root's second highest score was 83.25 points. The evaluation formula used by the Corps took into account the price factor.^{3/}

The contracting officer found that Teer/Jorgenson's BAFO, which received 71.25 out of 75 points and had no proposal deficiencies, was "clearly technically superior" to the other offerors, including Brown and Root which received a 56.50 technical score.^{4/} The contracting officer further found that "this large difference in technical evaluation justifies award to the higher priced proposal based on the additional technical expertise of Teer/Jorgenson and that award should be made to the offeror with the highest points.

Brown and Root protests the validity of the RFP evaluation criteria, contending that an award to a much higher priced offeror cannot be justified under proper criteria. This protest is untimely filed under our Bid Protest Regulations, inasmuch as it concerns an alleged solicitation defect and was not filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Consequently, this protest basis is dismissed.

Brown and Root also protests the award evaluation. Brown and Root contends that its management proposal was good, as evidenced by its inclusion in the competitive range, and the

^{2/} Brown and Root proposed a 1.116 multiplier for regular time and a 1.395 multiplier for overtime for a evaluated combined percentage of 1.13. Teer/Jorgenson's regular time multiplier is 1.192 and its overtime multiplier is 1.350 for an evaluated combined percentage of 1.20. Over the contract and option periods, this difference in multipliers could represent as much as an additional \$3 million higher price, depending upon the value of the total job orders assigned under the contract.

^{3/} Brown and Root received the maximum 25 points for price while Teer/Jorgenson received only 12 points.

^{4/} Brown and Root's technical/management score was the fourth highest awarded.

high rating its basic proposal had received on other, similar procurements. Although Brown and Root concedes that it was possible for Teer/Jorgenson, the incumbent contractor, to have a better management proposal, it asserts that it is unlikely that Teer/Jorgenson's management proposal was so superior that it would completely overcome Brown and Root's substantial price advantage.

In a negotiated procurement the agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor; the agency has the discretion to select a more highly rated technical proposal if the selection is consistent with the RFP evaluation scheme. Jones & Company, Natural Resource Engineers, B-228971, Dec. 4, 1987, 87-2 CPD ¶ 555; Radiation Systems, Inc., B-222585.7, Feb. 6, 1987, 87-1 CPD ¶ 129. Here, not only was Teer/Jorgenson rated significantly higher technically than Brown and Root, the technical/management factors constituted 75 percent of the evaluation weight, such that a significantly higher rated management proposal could outweigh a significant price advantage.

Brown and Root expresses disbelief that it could have received a significantly lower technical/management rating than did Teer/Jorgenson.^{5/} Since the evaluation of proposals is the function of the contracting agency, our Office's review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and consistent with the stated evaluation criteria. Jones & Company, Natural Resource Engineers, B-228971, supra. We will question the contracting agency's determination concerning the technical merit of proposals only upon a clear showing of unreasonableness or an abuse of discretion. Lewis-Shane, CPA, B-221875, June 4, 1986, 86-1 CPD ¶ 522; Fairfield Machine Co., Inc., B-228015, et al., Dec. 7, 1987, 87-2 CPD ¶ 562.

We have reviewed the entire record, including the evaluators' worksheets, and found that while Teer/Jorgenson received a near perfect management/technical score, Brown and Root had a number of evaluated weaknesses and deficiencies, such that it was rated significantly lower than Teer/Jorgenson in each of the technical/management areas. Some of the evaluated weaknesses mentioned were that Brown and Root's demonstrated experience was primarily in new construction and big construction projects, not in maintenance and many small construction projects, and Brown and Root's ability to coordinate many subcontractors at the same

^{5/} The Corps has not advised Brown and Root of its point score or its evaluated deficiencies.

time was not sufficiently or convincingly demonstrated. Our review does not indicate that the Corps' technical evaluation lacked a reasonable basis or that it was unrelated to the evaluation criteria.

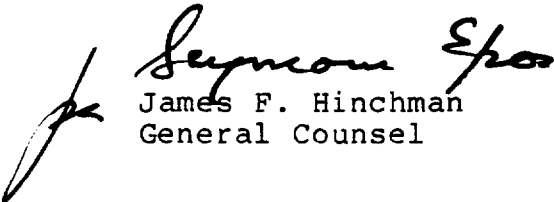
Brown and Root argues that the method used by the Corps in evaluating price was inconsistent with the RFP evaluation criteria. Brown and Root states, and the record confirms, that while the RFP said that offerors' prices would be compared to the government estimate, the Corps actually compared the offerors' prices to each other. Under the rating plan, the Corps gave a perfect score to the lowest priced offeror, zero points to the highest priced offeror and scaled points for those offerors between the low and high priced offerors. Since Brown and Root received a perfect score of 25 points for price and Teer/Jorgenson less than half that amount, i.e., 12 points, it appears that Brown and Root was not prejudiced by the Corps' evaluation; indeed, Brown and Root does not explain how it was prejudiced or how it would have modified its proposal if it had known of this price evaluation. See Shapell Government Housing, Inc., and Goldrich and Kest, Inc., 55 Comp. Gen. 839, 853 (1976), 76-1 CPD ¶ 161; Tero Tek International Inc., B-228548, Feb. 10, 1988, 88-1 CPD ¶ ____.

In any case, the contracting officer made the selection based upon a cost/technical tradeoff analysis, being fully cognizant of Brown and Root's low price and Teer/Jorgenson's significant technical/management advantage, and giving due weight to each evaluation area. Based on our review of the record, we find the contracting officer's determination to make award to a higher technically rated offeror, notwithstanding Brown and Root's lower price, was reasonable.

In the report on the protest, the Corps disclosed that it eliminated one of the technical evaluator's scores in the initial evaluation because that evaluator owned Brown and Root stock. That evaluator was not used in the BAFO evaluation. Brown and Root argues that the removal of this evaluator was improper, since Brown and Root is wholly owned by the Halliburton Company, so no individual owns "Brown & Root" stock, and that this removal taints the entire evaluation process. The record shows that this evaluator was concerned about his own potential for conflict of interest since he said he owned stock in a "Brown & Root organization" and he declined to evaluate the Brown & Root proposal in the initial evaluation, although he evaluated the other proposals. It is entirely appropriate for evaluators who assert potential or real conflicts of interest, e.g., owning stock in firms which have submitted proposals, to not participate in the evaluation. In any case, it is within the contracting agency's discretion to

determine how many and which members of a technical evaluation panel will review each proposal; a procuring agency may evaluate individual proposals with less than the entire evaluation panel. T.V. Travel, Inc., et al., 65 Comp. Gen. 109 (1985), 85-2 CPD ¶ 640. Consequently, this protest basis has no merit.

The protest is dismissed in part and denied in part.



James F. Hinchman
General Counsel